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Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Death Penalty and the Prohibition Against Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

The HRA welcomes the 2015 HRC Resolution 30/5, which urges all States to protect the rights of persons facing death penalty. Certain issues, however, raise questions about the ability of retentionsist States to continue imposing capital punishment without violating the prohibition against torture and cruel, inhuman, and degrading treatment. Such practices are increasingly limited as norms emerge within the international community towards complete abolition.

Conflict Between Death Sentence Practices and International Laws

International Covenant on Civil and Political rights (ICCPR) Article 6 guarantees the Right to Life. That is, every human being has the inherent right to life. This right shall be protected by law and no one shall be arbitrarily deprived of life. In countries that have not abolished the death penalty, sentences of death may be narrowly imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

The Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or punishment (CAT) defines torture as any act by which severe pain or suffering whether physical or mental is intentionally inflicted upon a person by or through the instigation or consent of a public official acting his official capacity to intimidate, punish or obtain info, among other motives. CAT further prohibits use of torture or cruel, inhuman, or degrading punishment or treatment committed by officials or under authorization and consent as well.

Although there is no complete bar against capital punishment, current State practices have lead to a violation against the universal prohibition against torture and cruel, inhuman or degrading treatment and thus, will be difficult to continue.

Death Row Phenomenon

The death row phenomenon constitutes torture under CAT's definition because it's a condition in which those who await execution suffer from severe mental trauma and physical deterioration while incarcerated. The Special Rapporteur on Torture identifies the circumstances to create the death row phenomenon as to "include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held."[1] This phenomenon has become commonplace in international jurisprudence. Other courts have identified legal authorities for holding these executions invalid.[2]

In the U.S. the conditions of death row phenomenon are amplified due to the combination of circumstances in the American system that produces severe mental trauma, physical suffering, solitary confinement, horrible prison conditions, lack of exposure to the outside. Arguably, the inmates themselves are consequently serving more than just their sentence. It's a death sentence plus life without parole due to the grossly long time served on death row. A U.S. national who was sentenced to death in 1992 has now spent 24 years on death row without even having his first appeal. It took 5 years for the California to appoint counsel, and another 10 years to reconstruct lost transcripts. The Inter-American Commission on Human Rights acknowledged these facts in an admissibility decision in March 2012.[3] Inmate Bobby Moore currently awaits his appeal in a case pending writ of certiorari in the United States Supreme Court. Moore

[1] UN General Assembly, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN doc. A/67/279, 9 August 2012.

[2] *See* Soering v. The United Kingdom, 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989; Pratt and Morgan v. Jamaica, (1993) 4 All E.R. 769; Paul Lallion v. Grenada, Case 11.765, Report No. 55/02, Inter-Am. C. H.R., Doc. 5 rev. 1, October 21, 2002.

[3] N.I. Sequoyah, Report No. 42/10, Inter-Am. Commission of H.R., found at: www.cidh.org/annualrep/2010eng/USAD120-07EN.doc

was sentenced to death in 1980 at the age of 20. He has spent over 35 years on death row, fifteen of which were in solitary confinement.[4]

Methods of execution

Most methods of execution have been explicitly deemed as violations of the prohibition against torture, while others are arguably on par with this conflict against international human rights. However, there are no methods of execution that comes close to comporting with international standards of humanity and dignity.[5] By its very act, any form of execution is a violation on the prohibition against torture and cruel, inhuman, degrading treatment and punishments since all executions inflict physical pain and psychological suffering to prisoners awaiting death.[6] The following lists the major forms of execution and some countries that still follow these practices.

- Public Hangings – still carried out by countries such as Iran, Afghanistan, Bangladesh, Iraq, Japan, Sudan, South Sudan, Palestine, and Malaysia.
- Public Beheading – Saudi Arabia is the only country in the world that still uses beheading as a method of execution for death convictions.
- Stoning – practice found in some countries following Sharia Laws.
- Lethal injections – United States, China and Vietnam.
- Electrocution – United States.
- Instances of botched executions.

Death Sentence for non-violent crimes

The legal basis for judicial executions under international law is found in Article 6 of the ICCPR. It states "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime." Arguably, Article 6 and the concept of "most serious crimes" is not meant to create an exception, but rather, it sets a direction towards abolition of the practice altogether by establishing state obligations to progressively restrict its use.[7] ECOSOC Resolution 1984/50 narrowed the scope of death penalty to not exceeding "international crimes with lethal or other extremely grave consequences."[8] The UN Secretary-General's 6th Quinquennial report stated, "offenses should be life threatening, in the sense that this is a very likely consequence of the action."[9] The UN Special Rapporteur on extrajudicial, summary or arbitration executions further defined "most serious crimes" as "cases where it can be shown that there was an intention to kill, which resulted in the loss of life."[10]

In countries like Iran, Saudi Arabia, United Arab Emirates homosexuality is a crime punishable by death. Other countries such as the People's Republic of China, Republic of China, and Thailand all maintain death sentencing for drug related offenses incompatible with international standards as to the definition of most serious crimes.[11]

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[4] Center for Constitutional Rights, found at: https://ccrjustice.org/home/blog/2016/01/20/death-penalty-horrific-here-s-something-makes-it-even-worse

[5] Amnesty International, Methods of Executions, found at: http://www.amnestyusa.org/ourwork/issues/death-penalty/us-scheduled-executions/methods-of-execution

[6] International Bar Association, The Death Penalty under International Law: A background paper on the IBAHRI Resolution on the Abolition of the Death Penalty, May 2008

[7] International Commission against the Death Penalty, The Death Penalty and the "Most Serious Crimes," A country-by-country overview of the death penalty in law and in practice in retentionist states January 2013.

[8] The Economic and Social Council, ECOSOC Resolution 1984/50 *Safeguards guaranteeing protection of the rights of those facing the death penalty*, May 1984.

[9] *Supra* at note 5.

[10] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/4/20, January 2007.

[11] *Supra* at note 5.

Abolition as an Emerging Global Trend that is Customary in Nature

To date, 98 States have abolished the use of death penalty as a sentencing scheme for any and all crimes. Further, 35 States which retained death penalty sentencing for ordinary crimes are considered abolitionist in practice since there have not been any executions within the past 10 years and are believed to have policies or established practice of not carrying out executions. Fifty-eight States still retain the death penalty sentencing for ordinary crimes and do, in fact, carry out such sentencing and execution.[12]

At the moment abolition of death sentencing and execution is not required, however, regional groups have taken steps to move towards abolition. For example, entry into the European Union requires that State themselves formally abolish such sentences.[13] Even within Nations that still retain the practice of capital punishment, like the U.S., many individual states themselves have abolished the sentence.

Recommendations:

Human Rights Advocates urges the HRC to:

- Adopt the Special Rapporteur's definition of the death row phenomenon.
- Request that States which have not yet abolished the death penalty but do not engage in the practice to ratify the Second optional Protocol to the ICCPR that aims towards abolishing capital punishment.
- Request that States which still actively practice capital sentencing and execution to impose a moratorium on sentencing while moving to ensure that sentences are not made arbitrarily, reserved for the most serious crime, with procedures set in place to avoid further violations on the prohibition against torture.
- Urge that all countries party to the ICCPR abide by its provisions, more specifically Articles 6 and 7 to protect the right to life and continue to adhere to the universal prohibition against torture and cruel, inhuman, and degrading treatment as a form of punishment.

[12] Death Penalty Information Center, Abolitionist and Retentionist Countries, available at: http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries

[13] European Union External Action, EU Policy on Death Penalty, available at: http://eeas.europa.eu/human_rights/adp/index_en.htm.